

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
ISSUED BY KING COUNTY TO
AMERICAN SEA VEGETABLE COMPANY,

SAVE OUR SOUND CITIZENS
COMMITTEE,

Appellant,

v.

KING COUNTY, AMERICAN SEA
VEGETABLE COMPANY, and STATE
OF WASHINGTON, DEPARTMENT OF
ECOLOGY,

Respondents.

SHB No. 82-51

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of a shoreline substantial development permit issued by King County to American Sea Vegetable Company, came on for hearing before the Shorelines Hearings Board, Gayle Rothrock, Chairman, David Akana, Larry Faulk, Nancy Burnett, A. M. O'Meara, and Rodney Kerslake, Members, convened at Lacey, Washington, on January 26, 27, and 31, 1983. William A. Harrison,

Administrative Law Judge, presided.

Appellant was represented by its attorney William V. Vetter. Respondent King County did not appear. Respondent American Sea Vegetable was represented John R. Olson, Partner. Respondent Department of Ecology was represented by Wick Dufford, Assistant Attorney General. The State of Washington, Department of Natural Resources was granted leave to submit a brief as amicus curiae. Reporters Janet Neer, Duane W. Lodell, and Nancy A. Miller recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard or read and exhibits examined, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

This matter arises in Tramp Harbor, an open, crescent-shaped bay where Maury Island joins Vashon Island. The proposal at issue is a sea-farming endeavor somewhat new to this country but practiced for centuries in Japan. It consists of growing and harvesting in sea water, annual crops of a vegetable known as "nori." This, in turn, can be processed into a number of foods for human consumption.

II

The proponent, American Sea Vegetable Company, applied to King County on April 2, 1982, for a shoreline substantial development permit. The proposed development consists of 50 water-borne rows of floats and lines, each of which supports nets on which the nori

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
SHB No. 82-51

grows. The array of 50 rows of nets, each row 216 feet long and spaced 40 feet apart would occupy 9 acres of water surface. The rows are tied on either end to a float made of an automobile tire filled with foam. From each of these floats, lines extend to the bottom of the bay where they are anchored by a 4-foot length of pipe. This pipe will be placed in the bottom with the aid of a water jet drill. Once set, these pipe anchors will not be removed. The area of bottom that would be staked out by the pipe anchors is 23 acres.

III

King County required preparation of an environmental checklist for compliance with the State Environmental Policy Act (SEPA) chapter 43.21C RCW. Based upon the checklist and an actual view of the site, King County issued a declaration of non-significance under SEPA. Following public hearing, King County granted a shoreline substantial development permit to American Sea Vegetable Company. This permit was limited by 8 conditions, one of which requires a separate, further shoreline permit for any expansion of the area occupied by the development.

IV

The depth of the water at the site is approximately 20 feet. Distance from the shore to the net array is 1,200 feet at high tide and 900 feet at low tide (mean lower-low water).

V

The 50-row array on the water surface is rectangular. It will be marked with 6 navigation lights, one on each corner and one at the

1 mid-point of both long sides. These lights are designed to be visibl
2 at a distance of one nautical mile to meet Coast Guard requirements.
3 They will create no unreasonable brightness or glare. When viewed
4 from the adjacent shore, they should be unobtrusive to persons of
5 normal sensibilities.

6 VI

7 The production of nori occurs seasonally. By a condition of the
8 subject permit, all nets, floats and rigging shall be removed from the
9 water between May 1 and August 31 of each year. Thus, nothing exists
10 to impede boating during the greatest portion of the boating season.
11 Boats seldom moor in Tramp Harbor during the off-season because of
12 occasional severe easterly winds.

13 VII

14 Certain phases of nori culture are conducted during the summer on
15 land. During September, when use of the water is first authorized, a
16 nursery phase occurs which differs from the production phase of the
17 months following. During the September nursery phase only, about
18 one-fourth of the usual area is occupied with U-shaped one-inch
19 diameter tubing tied together with poly line. The arms of the
20 U-shaped tubing extend about 5 feet above the surface of the water.
21 During September the nets are raised out of the water for 2 hours
22 every 2 or 3 days. This "weeds the garden" by exposing unwanted
23 marine life which may cling to the nori to the air. This does not
24 harm the nori.

VIII

Other than during September, the U-shaped tubing will not rise above the water surface. During September when the nets are not elevated and all during the production months of October through April, inclusive, the top of the nets are flush with the water surface, and the bottom of the nets are about one foot below water surface. The maximum protrusion above the surface of the water during the 7 months of production is the one-inch "height" of the net floats, excepting the 6 navigation lights discussed in Finding of Fact V, above.

IX

During the nursery and production phases, the nori will be tended with a small boat. This is expected to be 20 feet long and powered with a 40-horse power outboard motor. While the boat motor will run to and from shore, it will be turned off while tending the nori except infrequently to move short distances at very slow speed. Harvesting of the nori will be done with the aid of a motorized harvester in the boat. Its 3-1/2 horse power motor is comparable to that of a lawn mower except that it is muffled better. A daily harvest would require operating the motorized harvester some 15 minutes (to harvest 5 rows) with proficient operators. The subject permit requires all engines to meet applicable King County noise code requirements. Noise from operation of the boat or harvester motors should not be significant.

X

The State Department of Natural Resources (DNR) has been

1 experimenting with nori for about two years to determine its
2 suitability for sea-farming in Puget Sound. The DNR has three nori
3 demonstration farms now in operation. These are located in waters
4 adjacent to McNeil, Hartstene, and Squaxin Islands in Puget Sound.
5 There is a program to share the results of these demonstrations with
6 the private sector in hopes that enterprises such as the one before us
7 will develop and prosper. Experience with DNR nori farms has not
8 shown any instance of nori escaping and growing outside the confines
9 of the nori farm. The water in Puget Sound is too cold to support the
10 entire nori life cycle, some of which is accomplished on land in nori
11 farming. The permit in question requires American Sea Vegetable
12 Company to provide certification satisfactory to DNR that its nori is
13 of only one species and is pathogen free before introduction into
14 Puget Sound. The proposed introduction of nori should result in no
15 pollution of the waters nor biological harm to the marine life of
16 Puget Sound.

17 XI

18 No refuse is likely to accumulate on the beach as a result of the
19 proposed development. The subject permit requires a \$2,000 clean-up
20 bond for that unlikely eventuality.

21 XII

22 No structures are proposed adjacent to the site and the subject
23 permit prohibits these. The nori will be transported to an existing
24 processing site about five miles inland on Vashon Island.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB No. 82-51

XIII

Appellants speculate but have not proven that the proposed development will frighten sport or commercial fish species. The 100 black brant (sea geese) which migrate through Tramp Harbor each spring are wary of human activity. With or without the proposed development, Tramp Harbor has sufficient human activity so that brant will be attracted or discouraged to about the same degree.

XIV

Tramp Harbor is within the water temperature range that is required for the seasonal growth and production of nori. Nutrient levels and water depth at the site are also appropriate.

XV

The site is within a shoreline of statewide significance. RCW 90.58.030(2)(e)(iii).

XVI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Appellant first contends that the action of King County in preparing a negative threshold determination was incorrect in light of WAC 197-10-230(5) implementing SEPA. It argues that King County could not do so because DNR, not King County, is designated the lead agency

1 by the above rule.¹ Even if the rule applies, this argument is
2 without merit on the facts of this case. The rule cited by appellant
3 can be varied by agreement of the public agencies concerned. WAC
4 197-10-240. It would be pointless to accede to appellant's argument
5 where, as here, DNR has participated in this case as amicus curiae
6 urging that the project is consistent with the dictates of SEPA.

7 II

8 Appellant next contends that the negative threshold determination
9 does not comply with SEPA. We disagree. The environmental checklist
10 itself evidences actual consideration of environmental factors. San
11 Juan Co. v. DNR, 28 Wn. App 796, 801, 626 P.2d 995 (1981). The
12 negative threshold declaration based upon this record must be accorded
13 substantial weight. RCW 43.21C.090. We conclude that the negative
14 threshold determination was not shown to be incorrect.

15 III

16 We review the shoreline substantial development permit before us
17 for consistency with the applicable (King County) shoreline master
18 program and the provisions of chapter 90.58 RCW. RCW 90.58.140(2)(b).

19 IV

20 The proposed development is an "aquatic resource practice" as that
21

-
- 22 1. Although no respondent challenged appellant's assertion that WAC
23 197-10-230(5) is applicable here, we question whether this case
24 does not fall into the proviso of that section exempting marine
25 leases for a larger project requiring at least one other license
(King County's development permit now at issue).

1 concept is used in the King County Shoreline Master Program (KCSMP).
2 KCSMP Goals, Policies, Objectives, p. 24. The site in question is
3 designated "conservancy" by KCSMP, Supplement. The proposed
4 development complies with KCSMP 25.24.050 and 25.16.050 relating to
5 aquatic resource practices, and is a permitted use.

6 V

7 The proposed development is not "commercial development" as that
8 concept is used in KCSMP Goals, Policies, Objectives, p. 27:

9 Commercial development pertains generally to the use
10 or construction of facilities for transaction and sale
11 of goods and services as opposed to industrial
development (treatment together with posts) which
pertains to the design and fabrication of products.

12 The proposed development is not prohibited in the conservancy
13 environment by KCSMP 25.24.070 relating to commercial development.

14 VI

15 The proposed development is consistent with the King County
16 Shoreline Master Program.

17 VII

18 The proposed development protects against adverse effects to the
19 waters and aquatic life. Its effect upon navigation is seasonal and
20 minimal. It does not block access to the water by obstructing any
21 view, but rather, adds no more than an unobtrusive presence. It
22 enhances the public interest by allowing Puget Sound to produce more
23 food under these favorable circumstances. In that respect it
24 recognizes and protects the statewide interest over local interest.

1 The proposed development has not been shown to be inconsistent with
2 the policy of RCW 90.58.020 and the other provisions of the Shoreline
3 Management Act, chapter 90.58 RCW.

4 VIII

5 The shoreline substantial development permit should be affirmed.

6 IX

7 Any Finding of Fact which should be deemed a Conclusion of Law is
8 hereby adopted as such.

9 From these Conclusions the Board enters this
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IX

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The shoreline substantial development permit issued by King County to American Sea Vegetable Company is affirmed.

DONE at Lacey, Washington, this 7th day of April, 1983.

SHORELINES HEARINGS BOARD


GAYLE ROTHROCK, Chairman

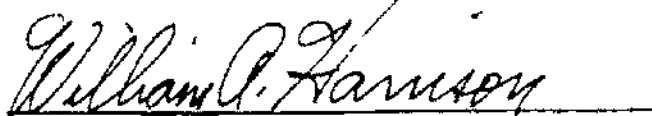

DAVID AKANA, Lawyer Member


LARRY FAULK, Member


NANCY R. BURNETT, Member


A. M. O'MEARA, Member


RODNEY KERSLAKE, Member


WILLIAM A. HARRISON
Administrative Law Judge